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11 Attorneys for Petitioners and Plaintiffs

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF LOS ANGELES**

14 KATHERINE MCNENNY and ADRIAN  
15 RISKIN,

16 Petitioners and Plaintiffs,

17 vs.

18 LOS ANGELES CHINATOWN BUSINESS  
COUNCIL, a non-profit corporation,

19 Respondent and Defendant

) Case No.: BS174784

) **PETITIONERS' EX PARTE**  
) **APPLICATION FOR ORDER TO SHOW**  
) **CAUSE RE: CONTEMPT AND**  
) **MEMORANDUM OF POINTS AND**  
) **AUTHORITIES IN SUPPORT THEREOF**

) Department: 86

) Judge: Hon. Mitchell L. Beckloff

) Petition Filed: August 15, 2018

) Hearing on Petition: July 24, 2019

) Ex Parte Requested Hearing Date: 11/15/19

) TELEPHONE APPEARANCE

23  
24 TO THE COURT, ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

25 PLEASE TAKE NOTICE that on November 15, 2019, at 8:30 a.m , or as soon thereafter as

26 the matter can be heard in Department 86 of this Court, at 111 N. Hill Street, Los Angeles,

27 California 90012, Petitioners, by and through undersigned counsel, will apply *ex parte* for an order

1 directing Respondent to show cause why it should not be held in contempt of this Court, pursuant to  
2 C.C.P. section 1209 (a)(5), for willful disregard of the Court's Order entered on August 19, 2019.

3 This application is made on the grounds that Respondent has willfully failed to search for  
4 and provide the public records identified in the Order. Further, Respondent has not provided a date  
5 upon which it will produce the records, and Respondent has ceased responding to Petitioners'  
6 communications regarding this matter, showing Respondent's intention to continue to willfully  
7 refuse to comply with the Order.

8 This application is based on the application itself and supporting memoranda of points and  
9 authorities, the concurrently filed Declaration of Anna Von Herrmann, the exhibits submitted  
10 therewith, the records on file in this case, and such further evidence and argument as may be  
11 properly presented at the hearing in this Application.

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13  
14 Dated: Nov 8, 2019

By: \_\_\_\_\_

Joseph Wangler  
Attorney for Petitioners

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1 presented to the court or judge of the facts constituting the contempt.” § 1211(a). In addition, courts  
2 have the “inherent power to punish for contempt of court,” which is “a necessary incident to the  
3 execution of the powers conferred upon the court and is necessary to maintain its dignity, if not its  
4 very existence.” *See In re Buckley* (1973) 10 Cal.3d 237, 247 (internal citations omitted).

5 The elements of contempt are: (1) a valid order from a court; (2) the litigant's knowledge of  
6 the order; (3) the litigant's ability to comply with the order; and (4) the willful failure to comply. *In*  
7 *re Ivey* (2000) 85 Cal.App.4th 793, 798. As discussed in detail below, Respondent is in contempt  
8 due to its failure to comply with the Court’s lawful order.

9 A. The Court Issued a Valid Order

10 As stated above, the Court issued a Judgment and Order Granting Petition for Writ of Mandate  
11 on August 19, 2019. (the “Order”) The Order required that Petitioner produce the requested records  
12 within 30 days. This order was duly signed by the Judge and lawfully entered. There is no question  
13 that the Order was valid.

14 B. Respondent Has Knowledge of the Order

15 Respondent clearly has knowledge of the Order. Respondent was Petitioners served a Notice  
16 of Entry of Judgment, with the Judgment and Order attached thereto, on Respondent on August 22,  
17 2019. (Von Herrmann Decl. Ex. A.) Second, filed the notice and proof of service with the Court on  
18 the same day. (*Id.*) Finally, Petitioners, by and through undersigned counsel, have repeatedly sent  
19 communications to Respondent regarding the Order. (Von Herrmann Decl. ¶ 3; Ex. B.).  
20 Respondent’s knowledge of the Order is manifest.

21 C. The Court’s Order Required Respondent to Take Actions Within Its Control

22 In relevant part, the Order required Respondent to search for and produce public records  
23 held by Respondent that are responsive Petitioners’ three CPRA requests. (Von Herrmann Decl. ¶ 2;  
24 Ex. A.) At all times since the Order was issued, performance of the required acts—conducting a  
25 search for records and producing responsive records within its possession—has been within  
26 Respondent’s power. Indeed, no entity other than Respondent can comply with this Order, as the  
27 requested public records that must be searched for and produced are in Respondent’s sole  
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1 possession and control. Despite its ability to comply with the Order, Respondent has failed to  
2 perform these required actions.

3 D. Respondent Has Willfully Failed to Comply with the Order

4 Respondent has been granted ample time and opportunity to comply with the terms of the  
5 Order. To date, approximately two-and-a-half months have passed with no action by Respondent.  
6 Respondent's failure to comply with the Order has been willful and deliberate.

7 Petitioners, by and through undersigned counsel, has repeatedly contacted Respondent's  
8 counsel in order to attempt to induce Respondent to comply with the Order as required by law.  
9 Petitioners either mailed, called, or emailed Respondent about this matter on August 22, August 23,  
10 August 26, September 13, and August 29. (Von Herrmann Decl. ¶ 3; Ex. B.) Respondent was  
11 informed that if it failed to comply, Petitioners would initiate compliance proceedings. (Von  
12 Herrmann Decl. ¶ 4) The BID ignored all these communications and has taken no action at all to  
13 comply with the Order. (Von Herrmann Decl. ¶ 5) Respondent therefore continues to unlawfully  
14 withhold records to which Petitioners and the public at large are statutorily entitled. *See* Cal. Gov't  
15 Code § 6250, *et seq.*

16 Accordingly, as established by this Memorandum of Points and Authorities and the  
17 Declaration of Anna Von Herrmann, Esq. filed and served herewith, Respondent's continued  
18 disobedience of this Court's lawful Order is a contempt of this Court.

19 **II. Conclusion**

20 Because Respondent continues to disobey the Court's lawful Order, Petitioners respectfully  
21 move this Court to issue an Order to Show Cause why Respondent should not be held in contempt  
22 and made to pay an appropriate fine up to one thousand dollars, and why any individual directors of  
23 Respondent with personal knowledge of the Order should not be imprisoned for five days. *See*  
24 § 1218(a).

25 Petitioners also respectfully request that Respondent be ordered to compensate Petitioners  
26 for reasonable attorneys' fees and costs incurred in connection with the contempt proceeding  
27 pursuant to § 1218(a), in an amount to be set in response to Petitioners' forthcoming Motion for  
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1 Attorney's Fees. Petitioners further request any other relief that the Court deems just and proper.

2  
3 Dated: Nov 8 October 8, 2019

By: \_\_\_\_\_

4 Joseph Wangler  
5 Attorney for Petitioners  
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